IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 2ND JANUARY 2007 / 12 POUSHA 1928

Crl.MC.No. 4134 of 2006()

[CRIME NO.1175/2006 OF KOLLAM EAST POLICE STATION]

PETITIONER: ACCUSED.

DR.SALIM, S/O. MUHAMMED KHAZIM,
SAHYADRI, NEAR LATHANSA AUDITORIUM,
VADAKKEVILA VILLAGE, PALLIMUKKU,
KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: COMPLAINANT.

---

1. STATE OF KERALA,REPRESENTED BY
SUB INSPECTOR OF POLICE, KOLLAM EAST POLICE
STATION, THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. MUHAMMED NOWFAL, S/O.ISMAIL,
VELIYIL VEEDU, PANDAKASSALAYIL,
ERUVA MURI, PATHIYOOR VILLAGE,
KAYAMKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.4134 of 2006

Dated this the 2nd day of January 2007

O R D E R

The petitioner had entered into an agreement for sale of immovable property with the second respondent herein/the defacto complainant. He has received an amount of Rs.7,10,000/- in all from the respondent/the defacto complainant. The respondent/the defacto complainant went before the learned Magistrate and filed a complaint wherein he alleged that the petitioner is guilty of fraudulent manoeuvre. According to him, with absolutely no intention to sell the property and fraudulent and dishonest motives, the accused had induced the defacto complainant to part with an amount of Rs.7,10,000/-. He had, in collusion with his wife, initiated a proceedings against himself before the Family Court and had got an order of attachment. The substance of the allegation is that with no serious intention whatsoever to sell the property to the defacto complainant, the petitioner had induced the complainant to part with an amount of Rs.7,10,000/-. He was always manoeuvring to avoid the liability to sell the property and the whole game was only to

induce the defacto complainant to part with money. The amount is not returned also.

2. The complaint filed by the defacto complainant before the learned Magistrate was forwarded by the learned Magistrate to the police under Section 156(3) Cr.P.C. The crime has been registered. Investigation is in progress. The petitioner, at this juncture, has come to this court with the prayer that the F.I.R may be quashed. Of course, this court has powers under Section 482 Cr.P.C and Article 226 of the Constitution to quash the F.I.R registered in an appropriate case. Where vexatious criminal prosecution is resorted to, the court is certainly entitled to invoke its powers to quash such proceedings and save the innocent indictee of the trauma of such undeserved persecution. Crucial question in this case is whether, on the facts and circumstances of this case, such powers can or need be invoked. If, as a matter of fact, the petitioner, in collusion with his wife has, after pre-planning, initiated proceedings before the Family Court after inducing the complainant to part with money, certainly a prosecution under Section 420 I.P.C would be justified. If, on the contrary, as contended by the petitioner, he had no responsibility for initiation of the proceedings by his wife before the Family Court and had honestly entered into the

agreement for sale, he cannot be prosecuted. It is for the police, in the course of investigation to ascertain whether the petitioner, even at the initial stage, entertained the fraudulent intention to deceive. At this stage and with the available inputs, it would be presumptuous on the part of this court to come to any authentic conclusion on the disputed facts. I have no reason to assume that the investigating officer will not conduct a proper and truthful investigation. I do not, in these circumstances , find any merit in the prayer for quashing the F.I.R.

3. Needless to say, the offence alleged being one punishable under Section 420 I.P.C, it shall be open to the petitioner to surrender before the learned Magistrate and seek regular bail. In the alternative, he has the right under law to approach superior courts for anticipatory bail under Section 482 Cr.P.C. I find no merit in the allegation that failure/miscarriage of justice would result if the police were permitted to continue the investigation.

4. In the result, this Criminal Miscellaneous Case is dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006